

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF BIG WOOD RIVER
GROUND WATER MANAGEMENT AREA

IN THE MATTER OF APPLICATIONS
FOR PERMITS FOR THE DIVERSION
AND USE OF SURFACE AND GROUND
WATER WITHIN THE SNAKE RIVER
BASIN

**ORDER APPOINTING DEPARTMENT
CONTACT FOR JOINT INFORMAL
PROCEEDINGS AND VACATING
PREHEARING CONFERENCE; NOTICE
OF JOINT PREHEARING
CONFERENCE**

BACKGROUND

This order sets a joint prehearing conference in the two proceedings listed above. The two proceedings each involve orders by the Director of the Idaho Department of Water Resources (“Department”) that establish moratoriums suspending further action on certain applications to appropriate water in southern Idaho. The first proceeding pertains to the Big Wood River Basin and centers on the May 17, 2022 *Order Establishing Moratorium* for the Big Wood River Ground Water Management Area (“Big Wood Moratorium”). The second proceeding pertains to the Snake River Basin upstream from Swan Falls Dam and centers on the October 21, 2022 *Amended Snake River Basin Moratorium Order* (“Snake Moratorium”). A hearing has not yet been scheduled in either proceeding.

A review of the dockets indicates one issue common to both proceedings—whether, as both moratorium orders concluded, “[a]pplications for municipal water use and for domestic use from community water systems shall be considered fully consumptive.” *Big Wood Moratorium* at 8; *Snake Moratorium* at 28.

On November 15, 2022, the City of Bellevue filed a *Motion to Vacate Schedule and Consolidate Proceedings and Request for Pre-Hearing Conference* (“Bellevue Motion”). Among other things, the Bellevue Motion notes that both the Big Wood Moratorium and the Snake Moratorium use “identical” language “relative to the consumptive nature of domestic and municipal use.” *Bellevue Motion* at 2. The City of Bellevue also notes that certain parties are participating in both the Big Wood River Basin and the Snake River Basin proceedings, such that “consolidating both matters will also allow for a more efficient method for considering the legal issues and will avoid potentially conflicting decisions, multiple and duplicative briefs, and allow for a more effective appeal if necessary after the hearing.” *Id.* at 3.

The City of Bellevue, the City of Hailey, and Wellsprings Group, LLC have appeared in both proceedings and seek to contest the conclusion that municipal and community domestic water uses are fully consumptive. In the Snake River Basin proceeding, the City of Idaho Falls, the

City of Ammon, the Coalition of Cities,¹ and Falls Water Co., Inc. filed challenges or objections and requests for hearing, contesting whether municipal and domestic water uses shall be considered fully consumptive.

On November 28, 2022, South Valley Ground Water District and Galena Ground Water District filed a response to the Bellevue Motion in the Big Wood River proceeding (“Districts’ Response”). These ground water districts “do not oppose limited consolidation regarding common issues” in the two proceedings. *Districts’ Response* at 4. But they “do not believe it is appropriate to wholesale consolidate both cases where the proceedings involve different and potentially unique factual issues.” *Id.* Accordingly, South Valley and Galena suggest “[i]t may be appropriate to schedule a joint pre-hearing conference to address this [consolidation] question” *Id.*

On November 29, 2022, the Board of Commissioners of Elmore County filed a response to the Bellevue Motion in the Snake River Basin proceeding (“Elmore County Response”). The Elmore County Board of Commissioners “expresses no opinion” regarding consolidating proceedings related to the consumptive nature of municipal water uses. *Elmore County Response* at 3. However, the Elmore County Board of Commissioners emphasizes that its Petition for Hearing raises a different, “more narrowly tailored” issue and therefore requests that its petition “not be consolidated with proceedings regarding the consumptiveness of municipal water rights.” *Id.*

JOINT INFORMAL PROCEEDINGS

Pursuant to IDAPA 37.01.01.100.03, and based on the Bellevue Motion, the Districts’ Response, and the Elmore County Response, the Director concludes joint informal proceedings are appropriate only for common issues related to the consumptive nature of municipal water use or domestic water use from a community system. Any party, including any intervenor,² to the Big Wood River proceeding or the Snake River Basin proceeding may participate in the joint informal proceedings. The Director encourages those who participate in the informal proceedings to seek a resolution on how the moratorium in each proceeding should address the consumptive nature of municipal water use or domestic water use from a community system. The Director further concludes that a Department employee must be appointed as the point of contact for the parties to mediate the informal proceedings.

¹ The Coalition of Cities consists of the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Heyburn, Hazelton, Jerome, Paul, Richfield, Rupert, Shoshone and Wendell.

² Idaho Power Company filed its *Petition to Intervene* in the Snake River Basin proceeding on November 29, 2022; the City of Boise filed its *Petition to Intervene* on December 6, 2022; and the City of Post Falls also filed its *Petition to Intervene* on December 6, 2022. The Director will resolve Idaho Power Company’s, the City of Boise’s, and the City of Post Falls’ petitions in a later order. In the meantime, Idaho Power Company, the City of Boise, and the City of Post Falls may participate in the joint informal proceedings as if they are parties to the Snake River Basin proceeding.

JOINT PREHEARING CONFERENCE

The Director concludes it is appropriate to hold a joint prehearing conference for both the Big Wood River and Snake River Basin proceedings. After a period of informal proceedings, there will be a need to determine which issues remain for hearing and how best to proceed on those issues. Parties should be prepared to address consolidating the two proceedings on common issues related to the consumptive nature of municipal water use or domestic water use from a community system. Parties should also be prepared to address bifurcating or otherwise expediting proceedings on the issues raised in the Snake River Basin proceeding by the Elmore County Board of Commissioners.

Because the parties' input on these matters and the outcome of the informal proceedings may influence the decision to consolidate the two proceedings, the Director intends to resolve the Bellevue Motion's request to consolidate after the joint prehearing conference. However, the Director is granting the Bellevue Motion to the extent it (a) seeks to vacate the prehearing conference currently set in the Big Wood River proceeding and (b) requests a prehearing conference in both proceedings.

NOTICE OF JOINT PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN that a formal, joint prehearing conference will be held to discuss the status of and schedule for both the Big Wood River and Snake River Basin proceedings on **March 10, 2023, at 1:30 PM (MST)** in Conference Rooms 602C and 602D of the Department's State Office, located at 322 E. Front Street, 6th Floor, Boise, Idaho. Parties may appear at the prehearing conference in person, by telephone, or by video conference.

To join the conference via computer or smartphone, please use the following Webex link, follow the prompts, and wait to be admitted by the meeting host:
<https://idahogov.webex.com/idahogov/j.php?MTID=m2801be8871508ee1e39aac5da76d43a5>.

To join the conference via telephone, please dial 1 (415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2469 411 2889.

The prehearing conference will be held in accordance with the provisions of Chapter 17, Title 42, and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/index.html>.

The conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations to attend, participate in, or understand the conference, please advise the Department no later than five (5) days before the conference. Inquiries for special accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815.

ORDER

IT IS THEREFORE ORDERED that Shelley Keen, Water Allocation Bureau Chief, is appointed as the Department contact for informal proceedings in both the Big Wood River Basin proceeding and the Snake River Basin proceeding on the issue of whether municipal water uses and domestic water uses from community water systems shall be considered fully consumptive. The parties may reach out to Shelley Keen as needed at shelley.keen@idwr.idaho.gov or by calling (208) 287-4800.

IT IS FURTHER ORDERED that the scheduling conference set for December 7, 2022, in the Big Wood River Basin proceeding is **VACATED**.

DATED this 6th day of December 2022.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of December 2022, the above and foregoing, was served by the method indicated below, and addressed to the following:

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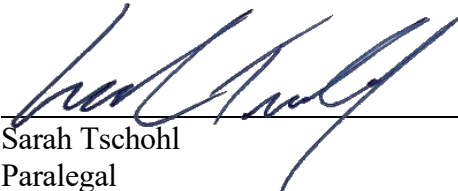
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